

RETURN DATE: DECEMBER 17, 2019	:	SUPERIOR COURT
	:	
DAVID MARKATOS & JENNIFER HOLME	:	J.D. OF STAMFORD
	:	
v.	:	AT STAMFORD
	:	
ZONING BOARD OF APPEALS OF	:	
THE TOWN OF NEW CANAAN	:	NOVEMBER 18, 2019

CITATION AND RECOGNIZANCE

TO ANY PROPER OFFICER:

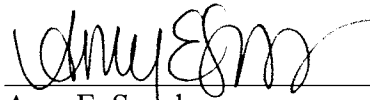
By Authority of the State of Connecticut, You are hereby commanded to summon the ZONING BOARD OF APPEALS OF THE TOWN OF NEW CANAAN, 77 Main Street, New Canaan, Connecticut 06840, to appear before the Superior Court within and for the Judicial District of Stamford at Stamford, 123 Hoyt Street, Stamford, Connecticut 06905, on December 17, 2019, then and there to answer unto the foregoing Complaint and Appeal of David Markatos and Jennifer Holme by leaving two (2) true and attested copies of the attached Appeal and of this Citation with the Clerk of the Town of New Canaan, 77 Main Street, New Canaan, Connecticut 06840, at least twelve (12) days before the return date.

David Markatos as principal and Donna S. Worroll of the City of Milford, as surety, are recognized in the sum of \$250.00, payable to the Zoning Board of Appeals of the Town of New Canaan to prosecute this appeal to effect and comply with the orders and decrees of this Court. I

hereby certify that I have personal knowledge of the financial responsibility of the Plaintiffs and deem them sufficient to pay the costs of this action.

HEREOF FAIL NOT, but of this writ, with your doings thereon, make due service and return according to law.

Dated at Milford, Connecticut, this 18th day of November, 2019.

A handwritten signature in black ink, appearing to read 'Amy E. Souchuns', is written over a horizontal line.

Amy E. Souchuns
Commissioner of the Superior Court

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**COMPLAINT AND APPEAL FROM THE DECISION OF THE
ZONING BOARD OF APPEALS FOR THE TOWN OF NEW CANAAN**

1. Plaintiffs David Markatos and Jennifer Home are the owners of real property at 1328 Smith Ridge Road in New Canaan, Connecticut (“Markatos-Holme Property”).
2. The Markatos-Holme Property abuts real property at 365 Lukes Wood Road in New Canaan, Connecticut (“Grace Farms”) owned and managed by Grace Farms Foundation Inc. (“GFF”).
3. Defendant Zoning Board of Appeals of the Town of New Canaan (“Board”) has authority, pursuant to General Statutes § 8-6, to hear appeals from the issuance of any order, requirement or decision made by the local zoning official.
4. On September 26, 2017, the Planning and Zoning Commission of the Town of

New Canaan (“PZC”) granted a special permit application to GFF to amend an existing special permit that GFF was granted in 2013 with respect to Grace Farms (“2017 Special Permit”). Ms. Keisha Fink was New Canaan’s Planner/Zoning Enforcement Officer when the 2017 Special Permit was issued.

5. The 2017 Special Permit authorized two additional principal uses for GFF at Grace Farms – “Philanthropic and Eleemosynary Institutions” and “Clubs and Organizations” – and merged 3 separate lots at Grace Farms into a single parcel. The 2017 Special Permit was granted subject to 100 conditions of approval.

6. Finding 13 of the 2017 Special Permit specifically addresses GFF’s use of a former residence at the entrance to Grace Farms, stating that “the PZC finds the use of the building as an Operations Center for security and other administrative operations is appropriate and consistent with the overall uses of the site.” (“Operations Center”). The Operations Center is separate and apart from another residence located on the former 82 Puddin Hill Road parcel (“Puddin Hill Residence”). Condition 41 of the 2017 Special Permit expressly limits the use of the Puddin Hill Residence to a single family dwelling.

7. Finding 13 is implemented in Condition 30, which states “the former dwelling on the site located at the main entrance is hereby approved to house the Operations Center for security and other administrative operations for the property and an accessory residential

apartment for an employee or “guest-in-residence” of the Foundation. The building shall not otherwise be rented for dwelling or commercial purposes.”

8. Condition 6 of the 2017 Special Permit further states “There shall be **no material change of the approved use or intensification of any use** unless specifically authorized herein.” [Emphasis added]

9. On January 16, 2018, GFF applied to revise the 2017 Special Permit for a third time, but this application was withdrawn on February 5, 2018. Included among GFF’s requests in this withdrawn application, was for the Puddin Hill Residence to be converted into additional administrative offices.

10. On March 5, 2018, GFF’s representative filed a building permit application to redevelop and expand the use of the Operations Center to include a 900 square foot conversion of existing garage space into offices, and four additional offices, which would permit 23 occupants. In October 2017, when the 2017 Special Permit was issued, 5 persons worked in the Operations Center.

11. On April 4, 2018, GFF’s representative sought and obtained a Zoning Permit (“Zoning Permit”) from then Planner/Zoning Enforcement Officer Keisha Fink for improvements and alterations to the Operations Center. The Zoning Permit contained material factual errors, including:

a. Marking “no” to whether any outstanding complaints or violations existed against GFF when, in fact, numerous complaints had been lodged or were actively pending with the Planner’s Office by various abutting neighbors, including Plaintiffs, with respect to GFF’s operations and management of Grace Farms since October 2015;

b. Marking “no” to whether Grace Farms was within 500 feet of another municipality when, in fact, Grace Farms is directly across the street from the towns of Pound Ridge and Lewisboro, New York;

c. Marking “no” to whether a special permit was granted to GFF for Grace Farms when, in fact, Ms. Fink had actively participated in the PZC’s consideration of the special permit application and handled subsequent operational issues and complaints concerning GFF’s operations and management of Grace Farms.

12. Following issuance of the Zoning Permit, on April 9, 2018, a Building Permit #BP-18-00137 was issued for the commercial additions and alterations to the Operations Center (“2018 Building Permit”).

13. On April 15, 2019, GFF’s representative filed Revision #1 to the 2018 Building Permit (“2019 Permit Revision”, and together with the 2018 Building Permit, the “Building Permit”) to make further material adjustments and alterations to the Operations Center by

creating two additional offices. This brought the total office count at the Operations Center to 10, from two at the time Conditions 6 and 30 of the 2017 Special Permit were imposed.

14. On June 19, 2019, a Certificate of Occupancy was issued for the Operations Center at Grace Farms following completion of the work.

15. Plaintiffs learned of the issuance of the Zoning Permit, Building Permit and Certificate of Occupancy (collectively the “Permits”) on July 12, 2019 through a Freedom of Information request. Neither GFF nor its representative published notice of their receipt of the Permits.

16. Plaintiffs thereafter filed a timely appeal to the Board on July 23, 2019 to contest the issuance of the approval of the Permits (“Appeal”).

17. On September 9, 2019 and October 7, 2019, the Board held a public hearing on the Plaintiffs’ Appeal. In addition to the material defects contained in the Zoning Permit as described above, Plaintiffs argued that Condition 6 of the Special Permit is clear that any material change in approved use or intensification of any use at Grace Farms is prohibited and thus any modification to the Operations Center required the review and approval of the PZC itself, not administrative signoff by the town’s zoning staff.

18. Additionally, in October 2017 – the same month as the issuance of the 2017 Special Permit – GFF began work to create a new public charity, “Unchain.” Unchain currently

shares its leadership with GFF, has hosted events at Grace Farms, and constitutes an additional principal use in violation of the 2017 Special Permit.

19. Counsel for GFF appeared at the hearing and disputed the Plaintiffs' allegations. He suggested the 2017 Special Permit did not prohibit modifications to the Operations Center as set forth in the Permits.

20. On November 4, 2019, the Board denied Plaintiffs' Appeal and upheld the issuance of the Permits.

21. Notice of the Board's decision was published in the New Canaan Advertiser on November 14, 2019.

22. Pursuant to General Statutes § 8-8(b), Plaintiffs are aggrieved by the Board's action as the appellant from the issuance of the Permits and as owners of property within 100 feet of Grace Farms.

23. In denying the Plaintiffs' Appeal, the Board acted illegally, arbitrarily and in abuse of its discretion in that:

(a) issuance of the Zoning Permit violated the terms of the 2017 Special Permit, particularly Conditions 6 & 30, and required prior review and approval by the PZC itself, without which it was illegally issued;

(b) without a valid Zoning Permit, the Building Permit and the Certificate of Occupancy were illegally issued;

(c) the Board failed to review the information before it in accordance with law, relying upon only information available to Ms. Fink rather than the evidence presented to it; and

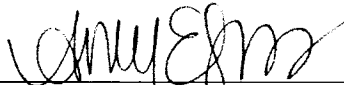
(d) issuance of the Permits was based on incomplete, inaccurate, or misleading information.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief as follows:

1. The appeal be sustained and the Board directed to reverse its decision denying the Plaintiffs' Appeal;
2. The Permits be declared void;
3. That pursuant to General Statutes § 29-265, the Operations Center be closed until such time as a valid zoning permit, building permit and certificate of occupancy have issued, and
4. Such other relief as is just and proper.

THE PLAINTIFFS
DAVID MARKATOS AND JENNIFER HOLME

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